G. R. S. 58

Previous references.

Legis 7-13(1-14)B.
CS 82-12(1)7.

1913. 14

(CS)

Previous file 27/15 A 24

File No. S7-13

Serial Nos. 1-2

Later references.

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. 1-2

Part B. for Sep. 13.

SUBJECT.

Execution of processes issued by Collectors in British territory for the Collection of Income tax.

From The Dy Comr Bf. Dist S109 1/8/13.
states that references for collection of Income tax from parties who stay Bf. temporarily are being received from the Collectors of H M's territory & the same are being sent to Auildar request that definite instructions may be issued in the matter.

To The Dy Comr Bf. Dist J 939 07 13/9/13.
states that an order passed by a Collector other than the Collector of C & M. Sts cannot be executed.

GPB—8,000—7-4-07

16.10.13.

G.R.S. 11] 1913-14

GENERAL AND REVENUE SECRETARIAT.

(Court)

NOTES.

File No. 57

FILE HEADING.

Execution of processes issued by Collectors in British territory for the Collection of Income-Tax

From

The Deputy Commissioner, Bangalore Dist.

No. 8109 Dated 1·8·1913 Received 4·8·13

Diary No. J417	Enclos.	Spare Copies.	Serial No. 1

BRIEF ABSTRACT OF LETTER.

States that refee for collection of Income-Tax from parties who stay in Bangalore temporarily are being sent from the Collectors of their territory and same are being sent to the Amildar for compliance & requests that definite instructions may be issued in the matter whether he is empowered to execute such processes.

NOTES AND ORDERS.

The general question now raised had (except others) come up before Govt last year on a refee from the then Dy Comr of the Bangalore Dist and has been fully discussed in pages 3 to 7 of the note in Govts file No 32 of 1912 but was dropped with No ... orders.

NOTES—First Sheet.

GPB—30,000—12-8-11

[I. R. S. 12]

General and Revenue Secretariat.

Cs File No. 57 of 1913-14

Serial No.

2 Subd provides with a copy of the Madras Income Tax Act, II of 1886.

Kg.-129
6.8.13 SW

3 Please let me see the correspondence that led to the enactment of the Explⁿ to Sec. 43 of the Cs Pro. Code. Cs File 82 of 03-04 put up now does not seem to have any bearing on the present question

SPK 7/8

4 Subd. Legis file 7 of 1903 which contains the correspondence that led to the enactment of the explⁿ to Sec" 43 of the new Civil pro. code, which corresponds to Sec" 229 of the old code, is put up. Cs file 82 of 03 has no bearing on the present question in as much as it contemplates of the execution of civil processes, but having been referred to in the paper under disposal, it was put up.

Kg.-129
14.8.13 MM.

5 The point referred by the Deputy Comr, Bangalore Dt. for instructions is whether requisitions from Collectors of British Territory for collection of

NOTE—Contn. sheet.

of Income tax can be complied with. This subject has been before Govt more than once; and when it was last before Govt no orders were passed & the subject was dropped. As the D.C. Com.r has raised the question again it becomes necessary to discuss the matter fully.

6) By Cl (3) of Sec. 30 of the Indian Income Tax act, an order passed by a Collector under Sub-Section (1) thereof "shall have the force of a decree of a Civil Court". It may therefore be argued that a Collector's order under Sec. 30 (1) is a decree & hence executable by the Civil Courts & Revenue Courts specially empowered in this behalf, under Sec. 43 of the Mysore Civil Procedure Code.

7) It has therefore to be considered whether the Collector's order under that section can be held to be a 'Civil Court decree' This point was elaborately considered in 1902 in Consultation with the Chief Court (vide File No 7 of 1903-04); and the

61 P—65,000—17-6-12.

Serial No.

Considered opinion of the Chief Court then was that an order of the Collector under Sec. 30 (1) of the Income tax is "certainly not a decree of a Civil Court" per Best C.J. in file No 7 of 03-04. This was accepted by Govt & was the basis for the introdn of the Explanation now appended to Sec. 43 C.P.C to the effect that an order of the Collector of the C&M Stn under Sec. 30 (1) of the Income Tax Act shall be deemed to be the decree of a Civil Court. This Expln was inserted because, but for it, no order of a Collector under that Section can be deemed to be a decree of the Civil Court. Thus, it is clear that the Govt is committed to the view that such an order of the Collector, outside Mysore, is not a decree of a Civil Court.

8) This view was also apparently agreed to by the then Resr; but the Resr, in para 3 of their letter No 2646 dt 10-5-1902 attempted to argue that the Collector's order may fairly be regarded as a decree

NOTE—Contn. sheet.

Serial No.

of a Revenue Court. Now, if this view is correct, the order can be executed by the Mysore Civil & Rev Courts, under Sec. 43 of the Civil Pro. Code. But all the weight of authority is against the view put forward in 1902 by the Resᵗ. A 'Revenue Court' is defined in the Civil Pro. Code (Sec. 5 (2)) thus:- A Rev. Court is a Court having jurisdiction under any law to entertain suits or other proceedings relating to the rent, revenue or profits of land used for agricultural purposes." A Collector acting under the Income tax Act has not the remotest chance of coming under this definition. Moreover, any officer, not adjudicating impartially between two contending parties, can be designated a Court, only under a special act or creation of the legislature. The Collector acting under Sec. 30 (1) Cannot therefore be held to be a revenue Court; & it has been already shown that he is not a Civil Court either & his

NOTE—Contn. sheet.

G11—65,000—17-6-12.

G. R. S. 12]

General and Revenue Secretariat.

Cb File No. 57 of 1913-14

Serial No.

order is not a civil Court decree. Hence Sec. 43 of the Civil Procedure Code becomes inapplicable to the case of an order of a collector other than that of the Chief Station.

9) There is no objection however to recover the taxes due to the British Govt if the defaulter voluntarily pay them. Such an arrangement already exists, as shown by letter No. 263 Mis. 18-4-1885 from the Chief Secretary to the Govt of Madras to the Resident, a copy of which was sent with the Dunbar's letter to the Resident No. 152 98- dated 23-4-03.

10) A draft in this sense to the D.J. Comr is submitted for approval or other orders.

Dy Secy

22/8

11 The draft proposed is quite consistent with the definition of a "Revenue Court" and the "explanation" attached to Sec 43 of the Civil Procedure Code. Without independent legislation, the only correct answer seems to be that furnished by the draft.

1st Councilor

Dy Secy of Law

30/8

12 Draft appd. by 1st Councillor

31.8.13.

13 Issue

Cor. p. 32 of File No. 7.

May the order herein be inserted?

All right. I would have this file as well as file No. 7 of 03-04 printed as A collection

A

24/9

NOTE—Contn. sheet.

G I E—65,000—17-6-12.

G. R. S. 12]

General and Revenue Secretariat.

CJ File No. 57 of 1913-14

Serial No.	
2	To The Deputy Commissioner Bangalore Dt. with respect to Sl. No 939, D 13.9.13 State that ~~an~~ an order passed by a collector other than the Collector of C & M Station Bangalore under § 30 (1) of Indian Income tax act, can not be executed by the Civil or Revenue Courts in Mysore and adds that however there is no objection to Comply with such requisitions, so long as parties from whom arrears are recoverable voluntarily pay them.

NOTE—Contn. sheet.

G I E- 65,000- 17-6-12.

1913 — 4

From The Deputy Commissioner
Bangalore District

To The Secretary to the
Government of Mysore
General & Revenue
Department

Dated

Despatched 1st August 1913

Received

General No. S. 109.

No.

Enclosure No. nil

Requesting to be informed of any authority under which requisitions from British Officers for collection of Income-tax have to be complied with by the Deputy Commissioners.

GPB—50,008—26-9-12

Deputy Commissioner's Office.
Bangalore District.
Dated Bangalore 1st August 1913.

No. 417
1913-1914
Dated 5.7.1913

From
K. Chandra Sekhara Aiyar Esqre B.A.
Deputy Commissioner,
Bangalore District.

To
K. R. Srinivasiengar Esqre M.A.
Secretary to the Govt. of Mysore.
General and Revenue Departments.
Bangalore.

Sir,

I have the honor to state that references for collection of Income Tax, from parties who come and stay in Bangalore temporarily, are being received from the Collectors of H. M. S. territory; and the same are, as a matter of routine, being sent to the Amildar for compliance.

Under explanation to section 43 of Civil Procedure Code, an order of the Collector, C. & M. Station, Bangalore, for collection of income tax, is to be deemed to be a decree of a Civil Court,

as

as mentioned in section 43 of the C.P. Code; and as such, the order of the C. and M. Station has to be executed.

In Government Proceedings No: L 3475-84/Cts 82-03-84/16 dated 13th January 1906, it is stated that all processes issued by Criminal Courts of British Territories, are to be executed by the officers of the Mysore State.

I am not aware of any authority under which requisitions from Collectors of British Territory, for collection of Income tax also have to be complied with.

I request that definite instructions may be issued in the matter for my guidance, and for the guidance of Subordinate Officers concerned.

I have the honor to be

Sir,

Your most Obdt: Servant,

N Maudy

Deputy Commissioner.

Dt Bangalore District.

G. R. S. 26]

Diary No. of letter replied to .....

General and Revenue Secretariat

( )

, *the* 191 .

Date of issue 13-9-13

Signed by M.S.P. Raja Gopala Chari

C5 File No. 57-13

Serial No. 2.

No. J 939

To

The Dy Commissioner

Bangalore Dt.

Sir,

With reference to your letter No S. 109 dt 1-8-1913 soliciting instructions as to how requisitions from Collectors of British territory for collection of Income tax due by defaulters living in this Province should be disposed of, I am directed to state as follows:

over.

SUBJECT.-

2

2. An order passed by other than the collector except that of the Com'r Bp, Bangalore a Collector under Sec. 30 (1) of the Indian Income-tax Act- cannot be regarded as a decree of a civil ~~Court~~ or within the meaning of Sec 43 of the Civil Pro Code; a Rev Court; and it cannot therefore be executed by the Civil or Revenue Courts in Mysore. on the authority of Sec 43 of the Civil Procedure Code.

3. There is, however no objection to comply with such requisitions, so long as the parties from whom arrears are recoverable voluntarily pay them. ~~No coercive processes are employed by us for their recovery~~. In this connection, I am to invite attention to the ~~forward an extract of~~ a letter from the Chief Sec't to the Govt of Madras Mysore to the Resident in Mysore No 263 Mis

List of enclosures.

Copied by

Examined by

GPB—25,000—8-8-11.

(G.R.S. 27]

GENERAL AND REVENUE SECRETARIAT.

(Continuation sheet draft form.)

Dy 18-4-1885, printed as Enclosure 2 to G.P. No 5188-216 Mis 995 Dy 8th Nov. 1887 regarding the receipt + remittance of revenue due to the British + the Mysore Govt.

I have etc

31/8/13

Dues rec'd by Govt 31/8

MU 10/9

Corr 8/9.